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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/714,784	11/17/2003	Jean-Luc Philippe Bettiol	CM1925MC	2443

27752 7590 05/21/2004

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EXAMINER	
DELCOTTO, GREGORY R	
ART UNIT	**PAPER NUMBER**
1751	

DATE MAILED: 05/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/714,784	BETTIOL ET AL.	
	Examiner	Art Unit	
	Gregory R. Del Cotto	1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *18 December 2003*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *19-40* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *19-40* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☒ Certified copies of the priority documents have been received in Application No. 09/720,346.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1. Claims 19-40 are pending. Note that, the preliminary amendment filed 12/18/03 has been entered.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.
>
> (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 19-34 and 36-40 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over EP 841,391.

'391 teaches a fabric treatment composition comprising a hydrophilic perfume and an amino-functional polymer, whereby effective perfume substantivity on the

treated fabrics is obtained. See Abstract. Suitable amino-functional polymers are water-soluble or dispersible polyamines. Typically, the amino-functional polymers for use have a molecular weight between 200 and 1,000,000 and have the same general formulas as recited by the instant claims. See page 2, line 47 to page 3, line 55. The perfume for use contains ingredients with odor characteristics which are preferred in order to provide a fresh impression on the surface to which the composition is directed. See page 12, line 32 to page 17, line 35. These perfumes include aldehydes, ketones, etc. See page 16, line 1 to page 17, line 35. Additionally, other detersive ingredients such as surfactants, builders, bleaches, etc. may be used in the compositions. Surfactants may be used in amounts from 1% to 55% by weight. See page 22, line 55 to page 23, line 15. Suitable bleaching agents include perborate bleaches, bleach activators, etc., which may be used in amounts from 1% to 30% by weight. See page 24, line 50 to page 25, line 10. Suitable bleach activators include nonanoyloxybenzene sulfonate, 6-octanamido-caproyloxybenzenesulfonate, etc. See page 25, lines 5-55. The detergent compositions will generally have a pH of between 6.5 and 11. See page 26, lines 35-45.

Specifically, '391 teaches detergent compositions containing containing 18% DEQA, 1% TAE25, 1% fatty acid, 0.02% hydrochloride acid, 0.6% PEG, 1.0% perfume 3, 0.01% silicone antifoam, 3% PEI 1200 E1, 1% dye fixative, 2% dye fixative 2, 600 ppm electrolyte, 50 ppm dye, the balance, water and minors. See page 33, lines 1-30. Additionally, '391 teaches a composition containing 25% DOEQA, 30% SDASA, 4% clay, 1.1% perfume 1, 5% PEI 1800 E1, and 5% dye fix 1, and stearic acid the balance.

See page 34, lines 10-35. Note that, on page 16, lines 10-15 of the specification, Applicant states that the reaction product can be easily prepared by condensation of primary amines and carbonyl compounds by elimination of water. Addtionally, on page 23, lines 10-15 of the specification, it is stated that "when the laundry and cleaning composition comprises a perfume, the amine reaction product is incorporated in the composition separately from the perfume. By this means of incorporation, the amine reaction product and its subsequent perfume release is more controlled. Thus, the Examiner maintains that the reaction product clearly can form by simply mixing the amine and perfume together in solution. The Examiner maintains that the polyamine polymer and perfume would inherently form a reaction product as recited by the instant claims when mixed and that the perfumes and polyamines as taught by '391 would inherently have the same physical properties as recited by the instant claims.

Alternatively, even if the broad teachings of '391 are not sufficient to anticipate the material limitations of the instant claims, it would have been nonetheless obvious to one of ordinary skill in the art to arrive at the claimed physical properties of the perfume and polyamine of the composition in order to provide the optimum cleaning properties to the composition since '391 teaches that the amount and types of perfumes and polyamine compounds added of acid to the composition may be varied.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA

1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 19-34 and 36-40 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 5-11 and 16-22 of US 6,699,823, claims 5-11 of US 6,511,948, 6-10 and claims 23-26 of US 6,566,312. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 5-11 of US 6,511,948, and claims 1-26 of US 6,566,312 encompass the material limitations of the instant claims.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to formulate a laundry and cleaning composition having the specific physical parameters containing a detersive ingredient, a product of reaction between a amino functional polymer and a perfume, and the other requisite components of the composition in the specific proportions as recited by the instant claims because claims 5-11 and 16-22 of US 6,699,823, claims 5-11 of US 6,511,948, 6-10 and claims 23-26 of US 6,566,312 suggest a laundry and cleaning composition having the specific physical parameters containing a detersive ingredient, a product of reaction between a amino functional polymer and a perfume.

Claims 19-40 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-17 of U.S. Patent No.

6,451,751. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1-17 of US 6,451,751 encompass the material limitations of the instant claims.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to formulate a laundry and cleaning composition having the specific physical parameters containing a detersive ingredient, a product of reaction between a amino functional polymer and a perfume, and the other requisite components of the composition in the specific proportions as recited by the instant claims because claims 1-17 of U.S. Patent No. 6,451,751 suggest a laundry and cleaning composition having the specific physical parameters containing a detersive ingredient, a product of reaction between a amino functional polymer and a perfume.

Claims 19-40 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-14 of copending Application No. 10/338521. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1-14 of 10/338521 encompass the material limitations of the instant claims.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to formulate a laundry and cleaning composition having the specific physical parameters containing a detersive ingredient, a product of reaction between a amino functional polymer and a perfume, and the other requisite components of the composition in the specific proportions as recited by the instant claims because claims 1-14 of 10/338521 suggest a laundry and cleaning composition having the

specific physical parameters containing a detersive ingredient, a product of reaction between a amino functional polymer and a perfume.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Allowable Subject Matter

Claim 35 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

None of the references of record, alone or in combination, teach or suggest a method as recited by instant claim 35.

Conclusion

2. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Remaining references cited but not relied upon are considered to be cumulative to or less pertinent than those relied upon or discussed above.

Applicant is reminded that any evidence to be presented in accordance with 37 CFR 1.131 or 1.132 should be submitted before final rejection in order to be considered timely.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory R. Del Cotto whose telephone number is (571) 272-1312. The examiner can normally be reached on Mon. thru Fri. from 8:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Gregory R. Del Cotto
Primary Examiner
Art Unit 1751

GRD
May 13, 2004